APPENDIX A

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 11,117

Dan W. Drew,
Appellee

versus

Rufus B. Lawrimore, *et al*,
Appellants

Appeal from the United States District Court for the District of South Carolina, at Columbia, Robert W. Hemphill, District Judge

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(Argued May 3, 1967. Decided June 19, 1967.)

Before Haynsworth, Chief Judge, and Winter and Craven, Circuit Judges

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Norman Knopf, Attorney, Department of Justice, (Barefoot Sanders, Assistant Attorney General, Alan S. Rosenthal, Attorney, Department of Justice, and Terrell L. Glenn, United States Attorney, on brief) for Appellants, and E. N. Zeigler for Appellee

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CRAVEN, Circuit Judge:

This is an appeal from three orders of the district court which compel the Secretary of Agriculture and members of various Agricultural and Conservation Service (ASC) committees to establish new boundary lines for "local administrative areas" used in the administration of the tobacco marketing program.

This action was brought by Dan Drew, a Marion County, South Carolina, flue-cured tobacco grower, in an attempt to gain a higher tobacco quota for his farm. Since, by statute, the size of a tobacco quota depends in part upon the "local administrative area" or "community" in which a farm is situated,[1] Drew sought to have the boundary lines for Marion County communities redrawn so as to place his farm in a different administrative area and thus achieve a higher quota.

In its order of August 25, 1966, the district court held that the defendants were required by law to establish boundary lines for the Marion, South Mullins, and Rains Communities in Marion County as of December 1965, but that "no physical boundaries for [these] communities had been established * * *." The district court further held that in establishing these boundaries the defendants were to give consideration to natural resource factors affecting the use of the land.[2] The defendants were directed to determine

[1] Until 1965 "local administrative areas" or "communities" had not been of great consequence to the average farmer since they did not affect a farm's marketing quota. However, the 1965 amendments to Section 317 of the Agricultural Adjustment Act of 1938, 7 U.S.C.A. § 1314(c), created a new tobacco program that for the first time utilized communities in a manner which directly affected the size of a farm's tobacco quota.

[2] This conclusion was based on the district's court's interpretation of Section 8(b) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C.A. § 590h(b), which sets forth the basic administrative structure for agricultural programs and requires the Secretary to designate "local administrative areas." The district court reasoned that the broad policy considerations in Section 7(a) of the Act, 16 U.S.C.A. § 590g(a), must be read into every part of Section 8(b) of the Act. Thus, the district court concluded that the following policies, among others enumerated in Section 7(a) of the Act, should be considered in determining "local administrative areas:" preservation and improvement of soil fertility; promotion of the economic use and conservation of land; and the diminution of exploitation and wasteful and unscientific use of soil resources.

boundaries for the three communities as of December 1965, "giving full consideration" to conservation and economic policies in Section 8(b) of the Soil Conservation and Domestic Allotment Act,[3] and to "relevant physical, scientific and economic facts established * * * before the * * * [local] Review Committee, * * * as may have affected the use and conservation of [Drew's] land and other land similarly situated."[4] Defendants were ordered to file with the court a map showing the new boundary lines within ten days.

The defendants made the determination of boundaries between the communities in question and filed with the district court a map on which these were shown along with a lengthy explanation of their determinations. The defendants listed the various matters considered in constructing the boundaries. These included, in addition to pertinent statutes and regulations of the Department of Agriculture, the record

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[3] 16 U.S.C.A. § 590g(a). See note 2 *supra*.

[4] The local Review Committee, established pursuant to 7 U.S.C.A. Section 1363 for the purpose of reviewing marketing quotas of dissatisfied farmers, had conducted an administrative hearing in June 1966 on plaintiff Drew's quota. Drew produced Dr. H. P. Cooper, former Dean of the Clemson University School of Agriculture, who testified about various geological and weather factors operating in Marion County. On the basis of these factors, Dr. Cooper drew a line purporting to represent a natural drainage divide and weather line in the county. He was of the opinion that farms east of the line were generally better suited for tobacco production than farms west of it.

Drew's farm is located east of this line while most of the Marion Community, in which Drew's farm was originally placed, was located west of the line. Thus, the Marion community "average yield," which is determinative of the maximum marketing quotas for the farms in the community, was based upon production of farms primarily located west of the line. Dr. Cooper concluded that it was "wasteful" and "unscientific" to determine Drew's production in connection with the lands west of the line. He believed the use of the land would be more "economic," in terms of income to the farm, if the farm were grouped with those east of the line.

before the local Review Committee and other relevant information with respect to weather and soils in Marion County.

The defendants explained that all maps relating to the establishment of communities in Marion County prior to 1966 had been lost or destroyed inadvertently under a five-year disposal program for old records. But in their judgment, considering the multiple relevant circumstances,

> "in establishing community boundary lines as of December 1965 the lines of the then existing communities should be reestablished as nearly as possible from existing data * * *. It is found that by so doing the communities thus established meet reasonable requirements with respect to territory and workload and also give effect to natural resource boundaries such as the Little Pee Dee river * * *."

The defendants stated in their explanation that they took into consideration "insofar as is reasonably feasible" the provisions of Section 7(a) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C.A. 590g(a).

The defendants, after analyzing various natural resource factors in Marion County, observed in their explanation that

> "yields of flue-cured tobacco within 9 separate areas [communities] in the county vary widely between individual farms in the area but in each area there are farms that compare with farms in other areas. Since soil types are not uniform

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Dr. Cooper acknowledged that his testimony was in good part mere theory, and that differing capabilities of farmers could result in a farm west of the line raising as much tobacco as one east of it.

> on individual farms and the weather bureau records reflect adequate rainfall, it is not considered feasible to set up communities based on differences in soil or weather. * * * [V]ariations in yields are chiefly attributable to the cultural practices of the individual farmer such as the application of fertilizer and the spacing of plants together with the ability of the farmer to get the necessary work done on time and in a husband-like manner."

The defendants conclude that though they are not in a position to pinpoint these individual practices, the community boundaries established by them "result in reasonable community yields both in amount and in relation to each other and require less than the average number of adjustments when compared with the State or country as a whole."[5]

The district court in an order of September 12, 1966, responding to a motion to confirm the new boundaries, rejected the boundaries established by the defendants. The district judge held that the "record and applicable law require that the line between Marion Community and/or Rains and South Mullins Communities should follow as closely as practicable * * *" a specific line appearing in plaintiff Drew's exhibits which purported to represent the natural

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[5] Defendants noted that as these Marion County communities were constituted, farms with similar histories of tobacco production were grouped together. Thus over 84% of the farms in the county had tobacco production that was within the 80-120% critical limits of the average tobacco production for the community in which that farm was located. Only 16% of the farms needed to have their tobacco production figures adjusted (only 9% downward) in Marion County as compared with 21% nationally.

The Marion community in which Drew's farm was located is composed of high producing farms like his. The community average is higher than 69% of the flue-cured tobacco communities in the country.

drainage divide and weather line in Marion County.[6] The district court then required the defendants, under threat of contempt, to redraw the boundaries in question within four days in accord with the opinion expressed in its order. The defendant complied with the court's order, but filed timely notices of appeal. In an additional ruling on November 18, 1966, the district court declined to vacate its earlier orders.

Under the boundaries established by the defendants to meet the district court's order of August 25, 1966, plaintiff Drew's farm was located in Marion Community. The court-directed boundaries of September 12 placed Drew's farm in the South Mullins Community.

On this appeal the defendants do not take issue with the conclusion in the district court's order of August 25, that the boundary lines for the Marion County communities in question should be drawn anew. They ask us, however, to decide that the requirements of efficient administration, and not technical natural resource factors, are to determine the boundary lines for "local administrative areas" created by Congress to facilitate the administration of the agricultural program.

We need not decide this question. But in exercising restraint we in no way approve the position of the district court that natural resource factors are to be given controlling weight in determining the boundaries of "local administrative areas."

We believe it clear that the defendants gave consideration to natural resource factors in establishing community boundaries pursuant to the district court order of August 25, and, therefore, the district court

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[6] See note 2 *supra*.

erred in refusing to accept their determinations. The designation of "local administrative areas" is entrusted to the Secretary of Agriculture, who has delegated this authority, as directed by statute, to state and county ASC committees.[7] The explanation which accompanied the determination of boundaries for the Marion, Rains, and South Mullins communities pursuant to the order of August 25, disclosed that full consideration was given by the State and Marion County ASC Committees to the natural resource policies and factors as directed by the district court. The defendants established boundaries which they believed fair to the farmers within the communities and reasonable in view of the overall operations and purposes of the farm programs.

The district court, notwithstanding compliance with the law as interpreted by it, refused to accept the reasonable administrative determination, and instead substituted its own.

We noted in *Sleeth v. Dairy Prods. Co.*, 228 F. 2d 165, at 167-68 (4th Cir. 1955), that the rule is well established that

> "courts will not issue a mandamus or other order to control the action of an executive or administrative officer in the discharge of statutory duties involving the exercise of judgment or discretion, unless the attempted performance of the duty amounts to an abuse of discretion. * * *

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[7] Section 8(b) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C.A. § 590h(b), provides that "The Secretary [of Agriculture] shall designate local administrative areas as units for administration of programs under this section." It also provides that "[i]n carrying out the provisions of this section * * * the Secretary is directed to utilize the services of local and State Committees * * *."

> "[An order] will lie to compel officers with discretionary duties to take action, but it will not interfere with the exercise of their discretion unless their action is illegal, or is an arbitrary or capricious abuse of such discretion."

Accord, e.g., Panama Canal Co. v. Grace Line, Inc., 356 U.S. 309, 317-19 (1958); *Ayrshire Collieries Corp. v. United States*, 335 U.S. 533, 592-93 (1949); *Work v. United States ex rel. Rives*, 267 U.S. 175, 177 (1925). In *Freeman v. Brown*, 342 F. 2d 205, 214-15 (5th Cir. 1955), the Secretary of Agriculture had not classified a certain variety of tobacco as a separate kind for the purpose of arriving at marketing quotas. The Fifth Circuit held that the district court correctly ordered reconsideration by the Secretary because he "departed from what is required of him by statute: to keep statistics and consider the latest available statistics in making the determination as to kind when arriving at marketing quotas." 342 F 2d at 214. However, the district court order was held to have gone "beyond what is warranted by the evidence and in fact amounts to the setting of a marketing quota by the court." *Id.* Instead "[t]he Secretary must make a decision and his decision, if reviewed after he follows the statutory mandates, will be on the basis of whether he has abused his discretion in the decision." *Id.* at 215.

There was no abuse of discretion by the defendants in the present case but a deliberate and well-reasoned determination. Accordingly, the district court orders appealed from of September 12 and November 18, 1966, are

Reversed.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 11,117

Dan W. Drew,
Appellee

versus

Rufus B. Lawrimore, *et al*,
Appellants

Appeal from the United States District Court
for the District of South Carolina

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the orders of the said District Court appealed from, in this cause, be, and the same are hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States District Court for the District of South Carolina, at Columbia, for further proceedings not inconsistent with the opinion of the Court filed herein.

J. BRAXTON CRAVEN, JR.
United States Circuit Judge

Filed June 19, 1967.
MAURICE S. DEAN
Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 11,117

Dan W. Drew,
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versus

Rufus B. Lawrimore, *et al*,
Appellants

Appeal from the United States District Court for the District of South Carolina, at Columbia

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Upon consideration of the motion of the appellee, by his counsel, for a stay of the mandate, the opposition to the motion by counsel for the appellants, and the reply of the appellee to the opposition to his motion,

It is ordered that the issuance of a certified copy of the judgment of this Court in lieu of a mandate be, and it is hereby, stayed pending application to the Supreme Court of the United States for a writ of certiorari to this Court, provided the application for a writ of certiorari is filed in the said Supreme Court within the time prescribed by law.

CLEMENT F. HAYNSWORTH, JR.
Chief Judge, Fourth Circuit

Filed July 28, 1967
MAURICE S. DEAN
Clerk

APPENDIX D

STATUTES AND REGULATIONS

7 U.S.C.A. 1365. *Institution of proceeding for court review of committee findings.*

If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail or by certified mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

7 U.S.C.A. 1366. *Court review.*

The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct

such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

7 U.S.C.A. 1376. *Court jurisdiction; duties of United States Attorneys; remedies and penalties as additional.*

The several district courts of the United States are vested with jurisdiction specifically to enforce the provisions of this subchapter. If and when the Secretary shall so request, it shall be the duty of the several United States attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this subchapter. The remedies and penalties provided

for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law.

16 U.S.C.A. 590g. *Additional policies and purposes of chapter—Purposes enumerated.*

(a) It is declared to be the policy of this chapter also to secure, and the purposes of this chapter shall also include, (1) preservation and improvement of soil fertility; (2) *promotion of the economic use and conservation of land;* (3) *diminution of exploitation and wasteful and unscientific use of national soil resources;* (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909-July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio. * * *. (Emphasis added).

16 U.S.C.A. 590h (b). *Payments and grants of aid; local, county, State Committees; rules and regulations.*

Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 590g (a) of this title by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and

reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion; (2) changes in the use of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption; or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 590g (a) of this title; or (5) any combination of the above. Clauses (1) and (2) above shall be construed to cover water conservation and the beneficial use of water on individual farms, including measures to prevent run-off, the building of check dams and ponds, and providing facilities for applying water to the land. In determining the amount of any payment or grant measured by (1) or (2) the Secretary shall take into consideration the productivity of the land affected by the farming practices adopted during the year with respect to which such payment is made. In carrying out the provisions of this section in the continental United States, except in Alaska, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. * * *.

7 U.S.C.A. 1314c. *Acreage-poundage quotas—Definitions.*

(a) For purposes of this section * * *.

(5) The "community average yield" means for flue-cured tobacco the average yield per acre in the community designated by the Secretary as a local administrative area under the provisions of section 590h (b) of Title 16 which is determined by averaging the yields per acre for the three highest years of the five years 1959 to 1963, inclusive, except that if the yield for any of the three highest years is less than 80 per centum of the average for the three years then that year or years shall be eliminated and the average of the remaining years shall be the community average yield * * *.

7 U.S.C.A. 1388. *Utilization of local agencies.*

(a) The provisions of section 590h (b) * * * of Title 16, relating to the utilization of State, county, local committees, * * * shall apply in the administration of this chapter; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under section * * * 590g, * * * of Title 16. The local administrative areas designated under section 590h (b) of Title 16, for the administration of programs under * * * Title 16, and the local administrative areas designated for the administration of this chapter shall be the same.

7 C.F.R. 7.7:

Each county shall be divided into local administrative areas, referred to in this subpart as "communities." * * * The boundaries of the communities shall be fixed by the State committee after considering any

recommendations by the county committee. No such community shall include more than one county or parts of different counties.

7 C.F.R. 7.20:

The County committee, subject to the general direction and supervision of the State committee, and acting through community committeemen and other personnel, shall be generally responsible for carrying out in the county the agricultural conservation program, the price support programs as assigned, the acreage allotment and marketing quota programs, the wool incentive payment program, the programs under the Soil Bank Act, and except in the State of Hawaii the sugar program formulated pursuant to the acts of Congress specified in § 7.3 and any other program assigned to it by the Secretary of Agriculture or the Congress.

In so doing the committee shall:

* * *

(d) Direct the activities of the community committees elected in the county;

(e) Pursuant to official instructions, review, approve, and certify forms, reports, and documents requiring such action under such instructions;

(f) Recommend to the State committee needed changes in boundaries of communities;

(g) Make available to farmers and the public information concerning the objectives and operations of the programs administered through the county committee;

* * *

(k) Recommend to the State committee desirable changes in or additions to existing programs;

(l) Conduct such hearings and investigations as the State committee may request * * *.

* * *

7 C.F.R. 7.22:

The community committee shall:

(a) Assist the county committee in carrying out programs assigned to it;

(b) Inform farmers concerning the purposes and provisions of programs being administered in the county by the county committee;

(c) Assist in arranging for and conducting necessary community meetings; and

(d) Perform such other duties as may be assigned to it by the county committee.

7 C.F.R. 711.12:

* * * A review committee shall have jurisdiction to hear timely filed applications respecting quotas established or denied by official written notice for farms within its area of venue. In all cases, the review committee shall consider only such matters as, under applicable provisions of the act and regulations of the Secretary, are required *or permitted to be considered* by the county committee in the establishment of the quota sought to be reviewed. (Emphasis supplied).

7 C.F.R. 724.65 (a):

All farm acreage allotments and yields shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee * * *.

7 C.F.R. 724.68 (c) (5):

In applying the provisions of this paragraph, a farm that is physically located in a community shall be administratively located in such community. If the farm is physically located in more than one community, the farm shall be considered as located in the community to which it was assigned when the 1965 farm acreage allotment was established on an acreage basis, or, if the farm was not assigned to a community when the 1965 farm acreage allotment was established on an acreage basis, the county committee shall locate the farm in the community in which the principal dwelling is located or where the major portion of the cropland is located, if there is no dwelling.

7 U.S.C.A. 1363. *Review of quota; review committee.*

Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 1362 of this title, have such quota reviewed by local review committee composed of three farmers from the same or nearby counties appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotments, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

28 U.S.C.A. 2201. *Creation of remedy.*

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C.A. 1361. *Action to compel an officer of the United States to perform his duty.*

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.